

EXHIBIT "2"

UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF PENNSYLVANIA

USA TECHNOLOGIES, INC.	:	
Plaintiff,	:	
	:	CIVIL ACTION NO.
	:	
v.	:	NO.: 09-661
	:	
JOHN DOE AND JANE DOE	:	
ANONYMOUS INTERNET WEBSITE	:	
BLOGGERS OPERATING AS	:	
VENDICIAN, USATSUCKS,	:	
HDUMASSE AND VENDCARD	:	
Defendants.	:	

AFFIDAVIT OF MARGARET SHERRY LURIO IN SUPPORT OF USA
TECHNOLOGIES, INC.'S MOTION FOR ISSUANCE OF SUBPOENAS DUCES
TECUM DIRECTED TO COMCAST CABLE COMMUNICATIONS, INC. AND LEVEL 3
COMMUNICATIONS, INC. PRIOR TO THE F.R.C.P.26(F) CONFERENCE

I, Margaret Sherry Lurio, Esquire, under oath, having been duly sworn, hereby deposes and says:

1. This Affidavit is submitted in support of USA Technologies, Inc.'s (hereinafter "USAT") Motion for Issuance of Subpoena *Duces Tecum* directed to Comcast Cable Communications, Inc. (hereinafter "Comcast") and Level 3 Communications, Inc. (hereinafter "Level 3") prior to the F.R.C.P.26(f) conference.

2. I am an attorney licensed to practice in the Commonwealth of Pennsylvania and the State of New Jersey.

3. I am a shareholder with the law firm of Lurio & Associates, P.C. in Philadelphia, Pennsylvania.

4. In connection with my representation of USAT, I have attempted to learn the identity of the individuals posting the messages which are the subject of the complaint filed in the

above referenced action.

5. Pursuant to the March 26, 2009 Order entered in this case whereby the Honorable Bruce W. Kauffman granted USAT leave to serve a Subpoena *Duces Tecum* directed to Yahoo!, I caused a Subpoena *Duces Tecum* to be served on Yahoo!.

6. On April 29, 2009, Yahoo! forwarded a response to the Subpoena *Duces Tecum*, a copy of which is attached to USAT's Motion as Exhibit "1". The information provided by Yahoo! did not provide sufficient personal information about the Defendants to determine their identity. The information provided by Yahoo! was either insufficient to identify the bloggers, or were obvious fictitious names. However, Yahoo! provided the following Internet Protocol (hereinafter "IP") address information for Defendants:

a) Vendician utilized two IP addresses: 69.142.64.96 and 65.89.178.10.

b) Usatsucks utilized IP address 68.45.90.249.

c) Hdumasse utilized IP address 68.46.158.47.

d) Vendcard utilized two IP addresses: 71.224.128.38 and 71.230.239.75.

7. I researched the American Registry for Internet Numbers (hereinafter "ARIN"), located at ARIN.net and under the "Whois" search, I was able to determine that Comcast is the IP utilized by all four defendants; and Level 3 is an additional IP

utilized by Vendician. The information provided on the ARIN website is attached to the motion as Exhibit "3".

8. The login time listed in Yahoo!'s records does not necessarily coincide exactly with the timing of the messages in question which are identified in USAT's complaint. Yahoo!'s legal department advised me that once an individual logs onto Yahoo!, the individual can remain logged on for up to two weeks. Therefore messages that are posted may appear with a login time that is within the preceding two weeks.

9. I contacted Comcast and Level 3 to determine the procedure for obtaining the identity of individuals posting the messages on Yahoo!'s website and was advised that no information can be disclosed without a Subpoena addressed to Level 3, and without a Court Order for the information from Comcast.

10. Absent issuance of a Subpoena, USAT is unable to determine the identity of the individual(s) posting the defamatory and actionable comments under the screen names Vendician, Usatsucks, Hdumasse, and Vendcard.

11. Without access to the information which USAT seeks to learn through the proposed Subpoenas, USAT has no adequate remedy against the individuals known as Vendician at IP addresses 69.142.64.96 and 65.89.178.10, Usatsucks at IP address 68.45.90.249, Hdumasse at IP address 68.46.158.47 and Vendcard at IP addresses 71.224.128.38 and 71.230.239.75.

Comcast Cable Communications, Inc.

12. Comcast's legal department advised me that absent a court order, Yahoo! will not disclose any information about the identities of internet subscribers.

13. Comcast's legal department advised me that once Comcast receives a civil subpoena with court order requesting information about a Comcast subscriber, Comcast provides fifteen business days notice to the individuals before the information is released in response to the subpoena.

14. Comcast's Privacy Policy (see Exhibit "6" attached to the Motion) provides in pertinent part as follows:

For subscribers to our high-speed Internet and phone services, the Cable Act requires Comcast to disclose personally identifiable information and individually identifiable CPNI to a private third party in response to a court order, and we are required to notify the subscriber of the court order.

Level 3 Communications, Inc.

15. On May 4, 2009, I spoke with Sandy Belstock in Level 3's Network Security and she advised me that Level 3 is a wholesaler whose customers are companies who in turn provide IP addresses to individual customers.

16. Based on the nature of Level 3's business, the proposed Subpoena *Duces Tecum* for Level 3 (see Exhibit "5") requests the identify of the company who leases the IP bloc from Level 3, and USAT still will not learn identifying information

about the defendants. When USAT receives information in response to a Subpoena *Duces Tecum* issued to Level 3, in order to determine the identity of the particular defendant utilizing Level 3, a further subpoena will have to be served on the company that leases the IP bloc from Level 3.

17. Accordingly, issuance of the Subpoena *Duces Tecum* on Level 3 does not raise any privacy concerns since the identity of the individual defendant will not be disclosed at this stage of the proceedings.

Sworn to and subscribed
before me this 5th day
of May, 2009

Stephanie McAlonan
Notary Public

Bry 2.
Margaret Sherry Lurio

COMMONWEALTH OF PENNSYLVANIA

Notarial Seal
Stephanie McAlonan, Notary Public
City Of Philadelphia, Philadelphia County
My Commission Expires July 28, 2009

Member, Pennsylvania Association of Notaries